

Exhibit 4

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, ex rel,)
W.A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA,)
et al.)
Plaintiffs,)
V.) No. 05-CV-329-GKF-PJC
TYSON FOODS, INC., et al.,)
Defendants.)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

HAD ON AUGUST 18, 2009

MOTION HEARING

BEFORE THE HONORABLE GREGORY K. FRIZZELL, Judge

APPEARANCES:

For the Plaintiffs: Ms. Kelly Hunter Foster
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1 Masci M-A-S-C-I, 53 S.Ct. 599, 601. The cases are many in
2 which a person acting outside the state may be held responsible
3 according to the law of the state for injurious consequences
4 within it. The liability is commonly imposed under
5 circumstances for maintenance of a nuisance.

6 So it's clear that common law can get conduct in
7 Arkansas, Oklahoma common law.

8 One other thing I neglected to mention, and if counsel
9 wants to address it he can. Their brief, their opening brief,
10 2033 says public nuisance damages must be limited to abatement.
11 They agree that there are damages for abatement. I didn't hear
12 that mentioned in the argument and with that I'll --

13 THE COURT: Didn't I decide at the motion to dismiss
14 stage that the Oklahoma statutes had no application in
15 Arkansas?

16 MR. NANCE: The Oklahoma, yes, you're correct. For
17 conduct in Oklahoma we had statutory authority.

18 THE COURT: Right. But I thought we had already
19 addressed the issue whether or not our statute had reach in
20 Arkansas.

21 MR. NANCE: You're correct.

22 THE COURT: Okay. All right, I had heard it --

23 MR. NANCE: For contact in Oklahoma we have the
24 explicit statute under our act.

25 THE COURT: Right. Okay.

1 MR. NANCE: And then we're not licensing or
2 authorizing, whatever they do in Arkansas, so it's not a
3 defense to what they are doing.

4 THE COURT: All right. Mr. Jorgensen, on that point?

5 MR. JORGENSEN: Your Honor, I have nothing to really
6 to add beyond the fact that you're correct, that you did hold
7 that the state statutory claims would not apply in Oklahoma --
8 I mean, excuse me, rather in Arkansas. And I did not address
9 abatement because of your damages ruling. We saved ourselves a
10 lot of time.

11 THE COURT: Specifically recall though we didn't
12 decide that Oklahoma common law didn't prevent a nuisance?

13 MR. JORGENSEN: That's precisely right. That's why I
14 did argue that today, Your Honor, and said time is finally here
15 on that.

16 THE COURT: I understand. Okay.

17 MR. BULLOCK: Judge, in terms of the individual
18 causation, could we join the Cargill motion on that. I know
19 they have some individual twists, but it might be more
20 efficient since there's an awful lot of overlap between the
21 individual Cargill causation and other larger causation.

22 THE COURT: Any objection to that?

23 MR. JORGENSEN: We're not prepared, Your Honor, to
24 handle it in that fashion. We divided them separately.

25 MR. BULLOCK: I thought Mr. Tucker was about to say

1 in the arguments by Mr. Chadick and others, they have not
2 presented any evidence or even attempted to present evidence
3 that phosphorus leaves a site. What Cargill did that was a
4 little bit different is that Cargill actually went out and made
5 an effort to test plaintiffs' hypothesis using plaintiffs'
6 evidence. And testing the hypothesis, it was not validated by
7 the evidence that they have. It's our position that as with
8 the general motion presented by all the defendants there is no
9 evidence. We went one step further and tested it as to that
10 small number. Cargill growers are a very small number so it
11 was fairly easy to identify those tests as relation to the
12 geographic area of Cargill growers. Testing their evidence and
13 only their evidence against Cargill growers, there was nothing
14 to substantiate the validity of their hypothesis. Just as in
15 Childers Royalty, there is no evidence of a phosphorus
16 contribution by a Cargill grower. The plaintiffs' hypothesis
17 has not been validated and the only person that's tested that
18 hypothesis has found it to be invalid. Thank you.

19 THE COURT: Thank you. Let's take a short recess.

20 (Recess.)

21 THE COURT: Be seated please. Before Mr. Baker, you
22 begin, let me rule on the out standing motion for summary
23 judgment. Upon review of the briefs and the argument of
24 counsel last week, the Court grants in part and denies in part
25 the defendants' joint motion for summary judgment on Counts 7

1 and 8 which is number 2057. The Court denies the motion for
2 summary judgment with regard to Count 7. The Court grants in
3 part and denies in part the motion for summary judgment as to
4 Count 8. The Court concludes that the Registered Poultry
5 Feeding Operations Act regulations do not apply to defendants
6 except as to those who operated their own growing facilities.

7 I believe the discussion last week was that Tyson
8 before 2004 had operated the Butler operation; correct? And I
9 don't believe -- and I'll defer to Mr. Bullock here -- I don't
10 believe there are any other of the defendants who operated
11 their own poultry operations within the State of Oklahoma;
12 correct? The discussion was that Cargill had operated some of
13 their own but only in Arkansas; correct?

14 MR. BULLOCK: I believe that's correct, Your Honor.

15 THE COURT: All right, that will be ruling of the
16 Court on number 2057.

17 Mr. Baker. I was telling my staff that one great
18 thing about this case, it sure makes the rest of the cases on
19 my docket look awful simple.

20 MR. TUCKER: Whatever happened to those old car wreck
21 cases, Judge.

22 THE COURT: Well, they are long gone. Mr. Baker.

23 MR. BAKER: May it please the Court. First of all, a
24 matter of housekeeping. I've conferred with the defendants.
25 Tomorrow is the deadline for responses for motions in limine.

1 our position that for that reason the direct cause test which
2 is mandatory as to proceeding against Cargill cannot be
3 satisfied by any of the evidence. Thank you, sir.

4 THE COURT: Thank you. We'll take a quick recess.
5 We'll be back in a few minutes.

6 (Recess).

7 THE COURT: Be seated please. To defendants' motions
8 for summary judgment on counts four and five, that motion will
9 be granted in part and denied in part. It will be granted only
10 as to the Oklahoma nuisance claim as applicable to activities
11 in the State of Arkansas. It will be otherwise denied.

12 As to motion for summary judgment number 2055, that
13 motion is denied based upon the briefing and the arguments.

14 With regard to motion number 2062, that motion will be
15 denied.

16 With respect to motion number 2069 that motion
17 similarly will be denied.

18 As to motion number 2079 and Cargill's motion or
19 joinder -- well, excuse me, I'll hit that next. With respect
20 to motion number 2079, the motion for summary judgment of
21 defendant Cargill, Inc. and Cargill Turkey Production, LLC,
22 that motion will be denied and Cargill's joinder in motion
23 number 2069 which is separately docketed as motion number 2086
24 is denied.

25 We will take a closer look at trial with regard to the